UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of herself and all others similarly situated,	.
Plaintiff,	. Docket No. 16-cv-00492-L-WVG
v.	. June 18, 2018 . 11:00 a.m.
BANK OF AMERICA, N.A.,	.
Defendant.	. San Diego, California

TRANSCRIPT OF FINAL APPROVAL HEARING
BEFORE THE HONORABLE M. JAMES LORENZ
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

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A-P-P-E-A-R-A-N-C-E-S (continued)

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SAN DIEGO, CALIFORNIA; JUNE 18, 2018; 11:00 A.M.

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THE CLERK: Attorneys, please state your names for the record.

MR. OSTROW: For class counsel and plaintiffs, Jeff Ostrow.

MR. ZAVAREEI: Hassan Zavareei, Your Honor, on behalf of plaintiffs and class counsel.

MR. HARGROVE: And likewise, on behalf of plaintiffs, John Hargrove.

MS. PIERSON: Cristina Pierson, also on behalf of class counsel.

MR. GOWDY: Bryan Gowdy on behalf of class counsel and plaintiffs.

THE COURT: Okay.

MS. OAKLEY: Good morning, Your Honor. Danielle Oakley on behalf of Bank of America.

MR. CLOSE: Good morning, Your Honor. Matthew Close, also for Bank of America.

THE COURT: All right. Very good.

MR. FRANK: Theodore Frank on behalf of Objector Rachel Threatt.

THE COURT: Okay. All right. This is primarily to hear from the parties and objectors as to the proposed agreement, which I am familiar with. It's pretty hard to

switch from criminal to civil just like that all the time.

In any case, that being said, let's start with class counsel and anything they want to add.

MR. OSTROW: Good morning, Your Honor. Jeff Ostrow for class counsel and plaintiffs.

We represent the named plaintiffs in this class that you provisionally certified -- it is a settlement class -- back in December of 2017. Thank you for doing our substitution of our original named plaintiff the other day and for the other housekeeping on the orders yesterday.

Obviously, we are here today for final approval of our class settlement as well as to have the Court make a determination as to the reasonableness of our fee application, service awards, and cost reimbursement.

The Court just told us that it's very familiar with the settlement. How would the Court like me to proceed this morning? I can go through the settlement in detail and all the elements of why this is appropriate for a class settlement for certification, or I can answer specific questions with respect to the settlement.

When we are done with that aspect, my co-counsel, Hassan Zavareei, will be handling the objections that were filed, or the responses to the objections.

THE COURT: I will leave it up to you. Between my clerks and myself, I think we are pretty familiar with all of

the facts. No need to go into great detail, but if there are a couple of things you want to stress, rather than go through the whole thing.

MR. OSTROW: That will be fine. I will avoid talking about procedural history and the actual claim itself and talk more about the actual settlement and why this is what I believe and my co-counsel believe to be an excellent class settlement.

In support of our motion for settlement, we have filed a number of declarations, as the Court knows. We filed declarations from the bank, which discussed the damages, which I think was important to the Court to understand how we calculated the damages and how we got to the percentage that we settled for. We have declarations filed by the administrator, Epic Systems; Cameron Azari, which discussed the notice plan and how we implemented what the Court had ordered in the original order.

We were very pleased to announce we had -- 93 percent of the class was notified by direct postcard notice as well as e-mail notice, and that information came directly from the bank, where we were able to get the contact information and send notice directly. Co-counsel and I have handled probably 50 cases against banks in the last ten years, Your Honor, and this is probably the best notice type of that you could possibly have, so we are pleased to announce that to the Court.

There was a declaration of CAFA notice that was sent out.

I think that's particularly important and it's become more important recently in that it gives an opportunity for the Department of Justice, as well as the attorney general of each state, including the District of Columbia, to analyze the settlement, and recently, they have been objecting to settlements. So they have an opportunity, on behalf of all the people in their state, to review the terms of the settlement, the fee application, and there have been courts that have halted approvals based on that. I think you are going to start seeing that a lot more. There's not a single objection filed by any of those.

We filed a declaration for the timely exclusions. There were only 100 opt-outs out of seven million. I think that says a lot about the settlement itself. We had 11 timely objections. Co-counsel will speak to those, but those mostly related to the fees.

We had a fee expert file a declaration in support of our application. He is the premier expert from Vanderbilt University, Brian Fitzpatrick.

And we recently filed a declaration of Deborah Goldstein, from the Center for Responsible Lending, which is our proposed *cy pres* recipient in the event that there are any funds left over after a second distribution.

So, just some of the heights of this case, Your Honor, without talking about procedural history, the reason why this

is extraordinary is because there have been seven cases -- six have been dismissed -- on the same exact theory, one of them against the same bank, in the Southern District of Florida, went up to the Eleventh Circuit, and it was dismissed and affirmed and basically said, "You have no case."

Your Honor ruled on the motion to dismiss. We survived that. They attempted to appeal it. The case was stayed. And we ultimately reached a settlement.

When we set out to bring these cases for fees against banks, Your Honor, our primary goal is to stop the practice. This is, in our opinion, an awful practice. It was yielding $20 million a month in revenue to the bank. And our first and foremost goal was to stop it because these are the people, the customers of the bank, that are paying the most amount of money back in fees and the people that have the least amount of money.

So we were extremely pleased that they have committed to a five-year cessation of the practice, have $1.2 billion, and there's been a declaration by the bank filed in support of that. And I think that is a monumental, huge goal, and we are very pleased to say we have made incredible changes in the banking industry for the better, including this one, and that's in the face of all those dismissals.

The cash portion of this and the debt relief portion, which we look at as almost one and the same because whether you

are getting money or you have had the ability of not having to pay money you owe, is what I consider gravy on the dinner, here, because the cessation of the practice is what we were after, and the cash and the debt relief of $66.6 million in itself I think is fantastic, but that is just a little bit extra for the class members to have. When you look at it in the totality, it is an average between the two of $10 per person they are going to get back, and that's gross, before any fees are deducted from there.

The notice administration costs are approximately two, and recently have been updated to possibly $3 million. Those are paid separately by the bank. That is another benefit that is to the settlement class. It is not something that we have calculated in our fee application, but it's something that's real, and the bank will tell you those dollars -- they have been paying them and will continue to pay them.

Some other highlights of this settlement that you don't see in a lot of other ones, there's no claims process. This is a direct distribution, pro rata, based upon the number of EOBC -- which the Court is probably familiar with that definition by now -- that each class member incurred. So you are either going to get a direct deposit into your account, if you are a current account holder, or you are going to get a hard-copy check sent to you, or you are going to get your debt wiped off of their books if you have less than $35 that you

owed at the time that you left the bank, or if you have in excess of 35, you will get a full $35.

Your Honor, I will finish up by saying we originally asked, in our notice to the class, for the ability to come before Your Honor to ask for 25 percent of the settlement value, which was $66.6 million. In actuality -- and that's what is in our paper -- the settlement value is $69.6 million, because you need to add in the notice and administration costs.

When you do that, our application, which we originally said we were going to come before the Court and ask for $16.5 million -- Mr. Zavareei will talk about that those objections -- but we voluntarily agreed to come before you and ask for $14.5 million. That is roughly 21 percent of the settlement value. When you add in the injunctive relief value of 1.2 billion real dollars -- which courts have awarded fees on injunctive relief, the value, when you can quantify it, which we clearly did -- you are looking at one percent.

And I think, after the monumental changes that were made in this industry, the real dollars that are going to these people, that our request is fair and reasonable.

In addition, Your Honor, we have asked for a service award for the named plaintiffs of $5,000 each. A couple of days ago, you substituted, for one of our deceased plaintiffs, the four adult children. With respect to those four, they would split the $5,000; $1,250 each.

We have advanced costs in expenses in this case below north of $53,000, Your Honor, and we believe that those expenses are fair and reasonable. We took all our travel and hotel accommodations -- we don't go out and drink bottles of wine and do any of those fancy things -- and we cut them straight up in half so that nobody can contest the reasonableness of those. And we also didn't charge for certain internal things, copying charges, phone calls, things like that.

We when we come before a Court, we take our obligation on behalf of the class extremely seriously. We expect, when you have a class against the second largest bank in the country, with seven million class members, you are going to get some objections. We believe it is opportunistic. My co-counsel will talk more about that. But we are extremely pleased, and we take our obligations seriously, and we have come before courts around the country with very, very fine settlements such this. We know we have made some serious changes, and we think our fee application is reasonable.

THE COURT: 14.5 million, that was after some meet-and-confer? Is that how that resolved? Because you were first, originally, at 16 million or thereabouts.

MR. OSTROW: Yes. After the objection period closed and we realized which parties were objecting, we were able to determine what the issues were, and 99 percent of the issues

related to fees or things that are totally outside the scope of the settlement. We did something that I think is pretty unique. In 20-something years of practicing, I have never done it before, and I think there's some value in it. We reached out to every one of the objectors, if they were pro se, or their counsel, and invited them to a mediation. And we did it in Washington, D.C. And we were there; objectors, or their -- pro se, could appear by phone. Mr. Frank had an opportunity to appear. He didn't want to appear.

And we basically said, "Let's talk about your objections." And they wanted to talk about fees. And we suggested, "If we reduced the fee a couple of million dollars to the class, is that something, at 14.5, you all would find reasonable?" And we believe that we left with a consensus -- I can't say that for Mr. Frank because he wasn't there -- that the consensus was, "Yes, that is reasonable."

So we decided that we would, in our final application, modify and come before you and ask for that number. We know that that's just kind of eliminating some of the background noise. This Court -- it is up to you to determine what is appropriate, fair, and reasonable, and we are going to go with what you do. But we figured we would try to resolve any issues as it relates to that.

So that process, to the extent that we got a consensus -- even though I believe there was a filing saying there wasn't --

we believe should be helpful for this Court, when you realize out of seven million people, you have now eliminated all but perhaps one or two that are objecting, and you can, I guess, decide what the purpose of them remaining or standing on their objections are.

THE COURT: All right. Very good. Thank you.

Yes. I won't really get into any questions at the moment because you apparently indicated you have someone who will respond to the objections. In the analysis, obviously, to a certain degree, how you treat that $29 million in debt relief, that kind of plays into the configuration of percentage.

But I have already seen the responses at this point, but notwithstanding that, I will let anyone else now -- anybody on your side want to add anything at this point, or do you want to get over --

MR. OSTROW: I think Mr. Zavareei would, but just a last comment on the debt relief. I know the objectors would like to claim it's not real relief.

THE COURT: My thought would be to let them go first and then let you respond. Okay. I am somewhat familiar because, obviously, in the paperwork, it did include that. But I will give you the opportunity now to put some meat on the bones, so to speak.

MR. OSTROW: Understood. Thank you for your time.

THE COURT: Sure. Let's have the bank go first.

MS. OAKLEY: Thank you, Your Honor.

We agree with class counsel that there is significant value to this settlement in the forms that he enumerated and discussed and are before the Court in the papers, the injunctive relief, cash component, debt relief.

I would like to offer just a couple of points of clarification. One goes to debt relief. The other goes to the effectiveness of the notice in this particular case.

With respect to the debt relief, the $29.1 million figure was arrived at excluding getting credit for folks as to whom the bank could not have pursued collection of those amounts in any capacity. Debts that the bank is aware had been discharged through bankruptcy, for example, amounts that were not actually collectible anymore are not included in the 29.1. So it is not illusory relief to people as to whom there could not have been any recourse. So that's not included in the 29.1 million.

THE COURT: Okay.

MS. OAKLEY: Class counsel also referred to a class member being entitled to cash relief or debt relief. Depending on the circumstance of each class member, a class member could receive both components of relief. If they had paid an EOBC out of pocket, they would be entitled to cash relief for that. And separately, if thereafter their account had been closed, with a different EOBC still pending, they would also get the debt relief. So people who fall into both camps get both forms

of relief.

The other clarification I want to make regards the effectiveness of the notice. As Epic's declaration set forth, the anticipated deliverable rate is 93 percent. I just want to point out there were only -- of just shy of 7.1 million class members, there were only six people to whom notice could not be provided either by e-mail or mail, which I think is extraordinary and worth pointing out. I think the notice protocol in this case was particularly strong.

THE COURT: Very good. Thank you.

MR. FRANK: Thank you, Your Honor.

Our only objection to the settlement related to the *cy pres*. They did exactly what we asked. They are going to provide additional distributions to the class. That resolves the 23(e) objection, so all that's left is the dispute over fees.

With respect to the percentage of the funds, we presented evidence that the $1.2 billion figure was not an accurate accounting of the benefit to the class because we presented evidence that the decline in EOBCs would be offset by increased fees elsewhere. Nobody disputed that. Nobody even responded to that. There's not actually a true benefit to the class with respect to that. The class will be paying higher fees elsewhere.

That leaves the 29.1 million. We are hearing now that

people who are bankrupt, people whose debts are not collectible, are not included in the 29.1 million. That does address some of our concerns, but it does raise new concerns, which is how are those people in the class being compensated? If they are not eligible for the debt relief, maybe they are getting cash relief. But if they don't have an account and their debts are uncollectible, are they getting any benefit, or are they waiving their claims for nothing?

I did not hear about this until now. It wasn't addressed in Docket 105, the responses to the objections. So that is an interesting question.

We have no objection to a reasonable percentage of the 37.7 million. We ask that the Court apply Ninth Circuit law regarding cross-checks. We have cited law. They have cited law. I think our explanation is accurate.

They make a lot of personal attacks on me. I don't need to get into that unless the Court would like me to.

I will say that there's a substantial difference between this case and *Eubank*, in that *Eubank* was a case that was fully litigated by the objectors and won 100 percent of what they were seeking; whereas here, this is a compromise, and therefore the cross-check is much more important. The class is compromising its claims at ten cents on the dollar. And we are not saying that that's not fair, but at the same time, it is a compromise, and therefore the avoidance of a windfall is much

more important.

And in *Eubank*, we documented the risk we undertook; whereas, here, there is no documentation of the risk, and in fact, the attorneys are including within their lodestar hundreds of hours for cases that they lost, which is the opposite of risk, because they are seeking to be paid for hours where they lost a case.

I am happy to answer any questions the Court might have.

THE COURT: I will wait until I hear the other side and then I may have some. Thank you very much.

MR. FRANK: Thank you.

I apologize. One more thing.

For the first time today, and in their reply brief -- they did not raise it before the objection deadline -- they asked for credit for the $3 million in notice and administration fees. It is within the Court's discretion to do that under Ninth Circuit law. That's the *Online DVD* case.

We would argue that it is inappropriate and the Court should exercise its discretion not to do that. And the case we would cite for that proposition is *Redman v. Radio Shack*, 768 F.3d. 622.

Thank you, Your Honor.

THE COURT: Thank you.

MR. ZAVAREEI: Good morning, Your Honor. Hassan Zavareei, on behalf of the class.

I am going to first respond to a couple of things that Mr. Frank said, and then there are a couple of other arguments I would like to make regarding his papers.

First, Mr. Frank argued that we presented -- I am sorry -- that he presented evidence that the 1.2 billion was illusory. If you look at his brief, that evidence consisted of conjecture that the bank could simply reinstate another fee and that that's all the banks really do. And he said we didn't respond to that. That's not true. We did respond to that. We pointed to the settlement agreement that says that, "Beginning on or before December 31, 2017, BANA agrees not to implement" -- it says, "EOBCs or any equivalent fee for five years."

And, Your Honor, we are not babes in the woods, here, with respect to banks and overdraft litigation. We have litigated against banks a number of times and a number of different theories related to overdraft fees. If they implement another unlawful fee, we will be there, Your Honor, just as we were when they engaged in overdraft fees for high-to-low reordering.

It is complete conjecture by Mr. Frank. It is not evidence. And we did respond to that. So the idea that there's no value to the 1.2 billion has no merit.

Your Honor, Mr. Frank also said that he has no objection to a percentage of the 37.5 million but that he believes that a lodestar cross-check is appropriate. Essentially, in his papers, what he is trying to do, Your Honor, is completely

inconsistent with the arguments he made in his *Eubank* case. We attached his brief there. And the law in this circuit is very clear that a lodestar cross-check is discretionary. There are a number of factors that you need to look at, and a lodestar cross-check is something the Court may look at.

But the appropriate analysis in the Ninth Circuit is to start -- when you have a common fund of identifiable funds, where the money can be readily quantified, you start with the 25 percent benchmark. And there is no question here, Your Honor, that the 3 million in notice and administration costs, the 37.1 million in cash benefits, and the 29.1 million in debt relief are readily quantifiable and are real benefits to the class.

And 25 percent, Your Honor, of that number would amount to over 17 million. And we are seeking much less than that, Your Honor. We are seeking 14.5 million, which amounts to -- once you add in the additional 1 million in notice and admin, it adds up to 20.8 percent of the entire cash value to the class.

And Mr. Frank did mention the *In Re: Online DVD* case. In that case, he argued that the Ninth Circuit should adopt a new rule and should not count those notice and admin costs. The Seventh Circuit has that rule, and the Ninth Circuit rejected that and said it is appropriate to consider those, because those are benefits to the class.

And again, we have done a lot of cases, set a lot of cases

with the bank. This is a big case with a lot of class members. It was very important to us that that money be included so that the cost of notice and administration did not dilute the funds that were available for the class members.

So, Your Honor, if I can, I want to talk for a minute, before I go into the various factors, with respect to how you adjust the 25 percent benchmark. Before I do, I want to talk about the lodestar and how that would play in here.

If the rule was, as Mr. Frank is advocating, that our fee should be based predominantly on a lodestar multiplier, that would create the exact wrong incentives in a case like this, Your Honor. This was a very important case, but I think, as my co-counsel pointed out, this is one of -- I think Your Honor was the only one to have the wisdom to get it right, in my view; but in the views of a lot of other judges, we were wrong, and there was a substantial risk that we could lose at the Ninth Circuit, a risk that we believed that the defendant valued at about what we settled this case for. And the predominant benefit to that was cessation of the practice and the cash relief to the class.

If the rule was what Mr. Frank was arguing for, we probably wouldn't have settled then, or at least there would have been inappropriate pressure to drive up our lodestar. That's what the Ninth Circuit talks about in the *Vizcaino* case, where it says, "It is widely recognized that the lodestar

method creates incentives for counsel to expend more hours than may be necessary." So while this Court does have the discretion to include that, Your Honor, I would suggest to you that the way that the Court includes that is to determine whether to and how far to depart from the benchmark.

So if we start at the benchmark, Your Honor, this Court has identified a number of different factors that the Court should look at, including the results achieved, the risk involved in the litigation, the skill and quality of the work, the contingent nature of the fee and the financial burden carried by the plaintiffs and awards made in similar cases.

I am not going to belabor the benefits to the class. I think my co-counsel already spoke to this and I think the bank spoke to this. But again, we are talking about massive injunctive relief with a readily quantifiable value. This is not hypothetical. It is not a coupon. It is not a new notice. It is not a change in disclosures. This is real money that would come out of the pockets of class members and non-class members.

And then there's the cash component; there's the 3 million in notice and admin; and then there's the very significant debt relief.

Your Honor, I know you raised a question about the debt relief issue. This is the second case in which I have been able to obtain debt relief for my class clients. In the other

case, which was in state court in Ohio, we were able to get a significant amount of debt relief, very similar to this. After all the money was distributed and after the debt relief was completed, we received a lot of positive feedback from the class.

This is valuable because, Your Honor, once -- for a lot of those people who have less than $35, their debt is going to be completely closed out. The bank is also obligated to notify check systems that that debt has been paid off, and they are going to do that for everybody. That's another value to the class. Once they do that, Your Honor, these people can now go open another bank account.

For the most part, if you have an outstanding balance with your bank, it's virtually impossible to open a bank account. You have got a lot of working poor, students, elderly, who have small balances with the banks. We are talking about 800,000 people, who it's almost impossible for them to open another bank account, and this will allow them to do that.

So this idea that this debt relief does not confer substantial, quantifiable value, Your Honor, I believe is incorrect. So that factor weighs heavily in favor of sticking to the 25 percent benchmark or moving up.

Similarly, Your Honor, awards in similar cases. We presented in our brief a list of overdraft cases that involved the high-to-low reordering, some of which we were involved in

and some of which we were not. In those cases, the lowest award that we have been able to find is 25 percent, and it goes all the way up to 44 percent. So, if you look at that factor, which is clearly one of the factors in this Court, the 25 percent is low.

With respect to the risk and complexity of the case, Your Honor, frankly, I think that the record of all the other cases which we have set forth shows the real risk here. Mr. Frank argues there is no risk here because the case was weak and cites to a quote that says that.

Your Honor, that's the opposite. When the case is weak, your risk is higher. In his appellate argument, he said he took on a lot of risks because he hardly ever gets awarded fees. But Your Honor, he gets a salary. The Competitive Enterprise Institute is not a contingency law firm, like our firms are. It is a nonprofit, aimed at objecting to certain class settlements they find objectionable. So that is not a real risk. What we are talking about is the people on this team who risk their livelihoods, who risk everything that they do in order to get benefits for the class.

And, Your Honor, another factor, the last factor, is the skill and quality of the work. Your Honor, I think when we brought this case, we sort of had two teams converging here, the Florida folks, from Mr. Hargrove, Ms. Pierson, Mr. Gowdy, they had litigated the case in Florida that went up to the

Eleventh Circuit, and we teamed up with them. We lost a similar case against Bank of Oklahoma. We thought, "Let's pool our resources. There is a lot of risk here. Let's pool our resources and see what we can do."

Bryan Gowdy is an accomplished appellate lawyer. Mr. Ostrow and I have been litigating overdraft cases for years. Mr. Hargrove had been litigating class actions and Ms. Pierson had been litigating class actions together for decades. So Your Honor, I would submit to you -- and you can be the judge of the quality of our work and the quality of our presentation, but I would submit to you, Your Honor, the skill required and the quality of the work has been exceptional.

So where do we go with the lodestar cross-check? Again, the Ninth Circuit has cautioned that the cross-check is entirely discretionary. And what that means, Your Honor, is it is just like any of these other factors. You are free to look at it. And it is high, here, although, what I would say, Your Honor, is currently it's -- as we submitted our papers, it is 8.8. If you include the time through to today -- and we only allotted one hour for this hearing -- it goes down to 8.1.

If there is an appeal, as there almost certainly will be -- and the reason we will be is not necessarily because of Mr. Frank's objection, but because of the objections of the professional objectors. They always appeal, Your Honor, and then what they do is they ask for payment to dismiss their

appeal. So we are going to have to have an appeal in this case. So that 8.1 multiplier is going to go down even lower.

So, Your Honor, to the extent that the Court feels it is important to use a lodestar cross-check -- and again, we argue it is not necessary -- if the Court does so, we believe that a reduction of 4 percent or a little bit more than 4 percent is more than sufficient to account for the high lodestar multiplier. Your Honor, the Ninth Circuit has made clear, class counsel should not be punished for getting a great result early. If that was the case and if that was the law, and that's the law that Mr. Frank is advocating for, that would have turned things on its head and create perverse incentives for class counsel.

The Ninth Circuit has clearly made law on this issue. We are not supposed to start with lodestar. It can be something you look at, but it should not be dispositive, and our fee should not be based on some sort of numerical analysis of what our lodestar multiplier is.

Your Honor, that's all I have for my presentation, but if you have any questions, I am happy to answer them now.

THE COURT: That's fine. Thank you.

I will hear from Mr. Frank if he wants to respond.

MR. FRANK: Thank you, Your Honor.

First of all, *Pella* was not a Competitive Enterprise Institute case. It was not a nonprofit case. It was done back

when I had a private practice outside of my nonprofit work. So I was not paid a salary for that case.

With respect to Ninth Circuit law, we are happy for you to look at the cases and see that the Ninth Circuit does require a cross-check. For example, in *Bluetooth*, 654 F.3d. 935, it talks about the importance of the cross-check to prevent windfalls. It is ironic because they accuse us of trying to change the law, and here they are arguing public policy and complaining that we are asking for an application of the law. Maybe the law is wrong. Maybe there would be a better law. They are welcome to make that argument to the Ninth Circuit.

I am happy to answer any questions you might have.

THE COURT: I don't really have -- I mean, I have your briefs, which are pretty thorough. There's really nothing in -- you have covered some of the thoughts I had as to the percentage-of-fund method and the lodestar.

And I will say that, as far as cross-checking, and I have been debating. I would have done some of that anyway. But how it comes out, to a certain degree, depends on other issues of which you have both discussed and vary on as to how you really treat the 29 million debt relief and some of the class who may have already alleviated any form of payment through bankruptcy or they just haven't paid. Some of that gets buried. So the nuances of that have to be looked at, and I plan on doing that further. We have been already looking at it from the

standpoint of a cross-check.

My understanding of the law in California -- I will look at the *Bluetooth* case. My understanding is it's not required under Ninth Circuit law. But I will look again, on *Bluetooth*.

But from the standpoint of the nuances, you have pretty well covered them.

Either way, I think that an amazing job has been done by the parties. The fact is that it took a lot of thought to uphold this considering our review of the other non-published decisions that have gone against us, and where I believe that the plaintiff's position is the right one. But the risk is great -- there's no question -- as was pointed out. There was a great risk in this case because you never know what is going to happen.

So I am going to look at it really closely. I don't really need anything further. Because between what you have said here today -- and I am going to get a transcript of that -- and your filings, I think I have the viewpoint all the way across the board.

The percentage-of-fund aspect of it, I have to say, in further review, if the debt relief is to be treated exactly as the class, the plaintiff's class, has analyzed it, then I think that that would be the way to go. If I look at it closer and I see that the debt relief issues are a little more nuanced, that might make a difference. I can go that way, too.

But I have to say that there's been a great deal accomplished for this class. I mean, they are going to have -- the credit scores are going to be eliminated or at least corrected based on the fact that the bank is going to take the necessary steps to alleviate any credit reporting. It allows them to get different bank accounts at different banks which would otherwise probably be precluded, along with a number of the other aspects of it.

So that's really all I have to say at this point.

In closing, I would say if you have any quick thoughts you want to add to this on either side, I am willing to listen because I am going to get a copy of the transcript. I think it's important to see what your exact points are. Sometimes you get it clearer when you are verbally indicating it than you do in papers.

MR. FRANK: I wouldn't put too much weight on the credit score, Your Honor. If somebody owes the bank $300 and that's on their credit report, and they are getting $30 debt reduction that's reported to the credit agency, they are going to owe the bank $270. And that's going to be reported as unpaid. That might make a point or two difference in a FICO score, but I don't even think it will make that much of a difference.

THE COURT: It's true. It's interesting that you say that. That's not the position of class counsel, at least in

the papers. It sounds to me like it's considered a plum, to a certain degree. And it seems like anything helps because once you get a credit score that's down, that can be very detrimental, particularly to people that are not particularly affluent.

Anyway, that's my thoughts, but I will take a lot of time to look at. It took a lot of time to decide this to begin with. We will do that.

MR. FRANK: Thank you, Your Honor.

THE COURT: Anything else you want to add?

MR. OSTROW: Just a couple of things, Your Honor.

We filed a declaration of Riaz Bhamani from Bank of America, which is that declaration that I spoke of with respect to the damages. The debt relief portion is specifically discussed in there, so you will be able to reinforce, hopefully, your consensus that this is significant and real relief, and it should be treated as equal as cash.

With respect to that, while you are considering that, please don't forget that the cases that we have cited from Professor Fitzpatrick, that he cited that we are relying on, as well as a number of the overdraft cases that we had in MDL 2036 in the Southern District of Florida, they awarded cash on the quantifiable injunctive relief. So I am not -- and they are in that brief, so don't take my word for it; read those opinions if you would like.

They didn't award a full 25 or 35 percent, but I believe there may have been 15 percent of the value of that injunctive relief, they gave out of the cash settlement fund. So that should make you comfortable to the extent that you don't think that a full 25 percent of that debt relief is appropriate, even though we do believe it is.

Finally, I will just say that I want to thank you for your time, for recognizing the risk that we took, for taking the time that you spent at the initial stage to rule in favor of the plaintiffs. We believe it is the right ruling. We haven't been successful elsewhere, but we hope if this gets finally approved, there will be other banks that want to follow suit knowing that one of the giants did it and it is the right thing for them to do as well.

So I finalize by saying we hope that you will issue a final approval, that you will award the fees that we are requesting, of 14.5 million, which is 21 percent of the settlement value; that you appoint our plaintiffs as class representatives, us as class counsel; that you deny the objections; service awards of $5,000 each, except for the four new participants, who will split the 5,000; reimbursement of litigation costs and expenses of $53,119.92; and enter a final judgment for us. Thank you.

THE COURT: Thank you very much. You have been actually very succinct in narrowing your issues in a very

cogent way. With that, thank you, and we will be back with you in a written order. Okay.

ALL: Thank you, Your Honor.

(End of proceedings at 11:50 a.m.)

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C-E-R-T-I-F-I-C-A-T-I-O-N

I hereby certify that I am a duly appointed, qualified and acting official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the aforementioned cause; that said transcript is a true and correct transcription of my stenographic notes; and that the format used herein complies with rules and requirements of the United States Judicial Conference.

DATED: June 22, 2018, at San Diego, California.

/s/ Chari L. Bowery
_____
Chari L. Bowery
CSR No. 9944, RPR, CRR